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SUBJECT: Tonga Investment Climate Statement 2009

REF: SECSTATE 123907

¶1. Paragraph 2 contains the text of the 2009 Investment Climate Statement for Tonga, per reftel.

¶2. Begin text:
Openness to Foreign Investment

The Government of Tonga seeks to be welcoming to business and investors. Many Tongans have lived in or visited the United States, and American products are readily recognized.

Legislation simplifying foreign investment and streamlining business registration procedures came into effect April 1, 2007. Tonga became the 151st member of the WTO in June 2007.

In November 2006, a pro-democracy demonstration degenerated into a large-scale riot. Rioters destroyed or damaged some 80% of the capital's central business district. Reconstruction has begun, aided in part by government secured funds providing low interest loans for reconstruction projects.

New customs and excise regulations that came into effect on July 1, 2008 grant exemptions from import duty on capital goods.

The Ministry of Labour, Commerce and Industries (MLCI) administers Tonga's foreign investment policy and regulations. Foreign invested businesses must obtain and hold valid foreign investment registration certificates. The application fee is about US \$50 and can be obtained by applying to the Secretary of the MLCI. Certificates are valid until the business terminates activity. If a business does not commence activity within a year after a certificate is issuance, the certificate becomes invalid.

After obtaining a foreign investment certificate, an investor must apply for a business license. The application, which must be accompanied by a valid foreign investment registration certificate, can be made to the Business Licensing Officer at the MLCI. Licenses cost about US \$38, renewals about US \$33, and expire on December 31 each year.

The MLCI also processes company registrations. A foreign company that wishes to do business in Tonga must apply for incorporation under Part XVIII of the Companies Act 1995. The applicant must first reserve the company name at a cost of about US \$37. The fee to register is about US \$373. For a company to qualify as a "Tongan company," the majority share-holder must be Tongan. Partnerships and sole proprietors need not register but must have a valid business license.

Land cannot be bought or sold in Tonga, but may be leased through formal lease arrangements. Leases are usually 50 years in duration, although the law permits terms up to 99 years. The government has designated areas for small industry development, known as Small Industry Centers, on the two main islands. Foreign investors are

prohibited from doing business in certain sectors. An updated list of these sectors can be obtained from the MLCI.

Conversion and Transfer Policies

The National Reserve Bank of Tonga exercises control on foreign receipts and payments. Repatriation of funds, including dividends, profits, capital gains, interest on capital and loan repayment and salaries, is permitted, with the following exceptions:

--when an industrial enterprise is partly financed by locally raised capital (including working capital), in which case the repatriation of funds will be related to the extent of foreign financing; that is, repatriation will be regulated on a pro-rata basis;

--in respect of capital gains, the amount eligible for repatriation will be restricted to the amount transferred inward through the banking system or by other approved methods; and

--expatriate employees will be allowed to remit overseas wages and salaries received in Tonga up to the amount on which income tax has been paid.

Obtaining foreign exchange is not difficult.

Expropriation and Compensation

Expropriation has not recently been an issue in Tonga.

Dispute Settlement

Tonga has a robust judicial system, staffed at the highest level by expatriate judges. The country's legal system is generally capable of enforcing contractual rights. Tonga has no formal bankruptcy law. There have been no high-profile investment disputes over the last five years. Legislation states that the provisions of the United Kingdom's Arbitration Act 1996 governs arbitration under Tonga's Foreign Investment Act. Tonga ratified the Convention on the Settlement of Investment Disputes in 1990.

Performance Requirements and Incentives

Investment incentives include:

-- Guaranteed long-term space and land leasing in the Small Industries Center, a 12-acre industrial estate, located about one kilometer from the center of Nuku'alofa;

-- Residential and work visas for foreign investors and their families for as long as the enterprise is in operation;

-- Priority for electricity, telephone, and water connections.

Technical and promotional assistance from the MLCI is available to help prospective investors identify, evaluate and set up industries. Once a business license is obtained, the business can operate.

Although the Foreign Investment Act specifies activities reserved for local businesses and included a list of these activities, the government allows full ownership by a foreign investor in cases where manufacturing activities use imported raw materials for export, or where the investments are too large for local investors. Projects are considered on an individual basis. The government generally encourages joint ventures.

Right to Private Ownership and Establishment

Both foreigners and domestic investors have equal rights for incorporating/establishing entities. Foreign investment legislation that came into effect in 2007 contains a list of thirteen business activities reserved solely for Tongans and separate list of business activities open to foreign investors. Tonga's Business Licenses Act has a separate list of activities reserved for Tongans.

CORPORATIZATION/PRIVATIZATION OF STATE-OWNED ENTERPRISES

A key aim of the government's on-going economic reform program is to

corporatize and eventually privatize agencies that perform non-core government functions.

Protection of Property Rights

Tonga has legislation protecting patents, utility models, designs and trade marks. A bill on enforcement and border measures has been endorsed by the cabinet and is currently under consideration. This legislation aligns Tonga's laws with its WTO obligations and contains stricter border controls for counterfeit products. Counterfeit products are widely available on the local market.

Transparency of Regulatory System

While it remains somewhat challenging to establish a business, the government has instituted reforms to make the procedures and processes easier and quicker for investors. The World Bank lists Tonga as the 43rd easiest country in which to do business.

It is not a practice in Tonga for parliament or government agencies to publish draft bills or regulations for public comment.

Efficient Capital Markets and Portfolio Investment

Foreign investors are generally able to obtain credit on the local market. The Tonga Development Bank (TDB), with assets totaling around US \$30 million, finances development projects that meet the TDB's criteria. In December, 2007 the TDB had a loan portfolio of around US \$25 million. There are also three international commercial banks, which together had approximately US \$160 million in domestic private sector loans outstanding in December 2007.

Political Violence

In November 2006, political protests degenerated into a large-scale riot. Numerous buildings were attacked, looted and burned. Rioters particularly targeted businesses associated with the royal family and businesses owned by ethnic Chinese and Indians. Approximately 80% of Nuku'alofa's central business district was destroyed or significantly damaged.

Subsequent to the November disturbances, the government declared a state of emergency, empowering the Tonga Defence Services to restore law and order within 24 hours of the events. The state of emergency has been repeatedly extended, most recently in November 2008 for another 30-day period. Total damages were estimated to be about US\$62 million. Businesses have begun reconstruction, aided in part by funds obtained by Tonga's government and used to provide low interest loans for reconstruction.

Corruption

Corruption has not been specifically identified as an obstacle to foreign investment. Both corruption and bribery are criminalized and prosecuted and the laws appear to be impartially applied.

In July 2008, the Office of the Anti-corruption Commissioner was established, charged with investigating official corruption. There are no international non-governmental "watchdog" organizations represented locally, and the country was ranked 138 out of 177 on Transparency International's Corruption Perceptions Index 2008.

Bilateral Investment Agreements

Tonga is party to a bilateral investment treaty with the United Kingdom. It is not party to any other bilateral investment treaties.

OPIC and Other Investment Insurance Programs

Overseas Private Investment Corporation (OPIC) insurance is available to investors in Tonga, and OPIC provides political risk insurance, finance, direct loans and loan guarantees.

Labor

The 2006 Census placed the unemployment rate at 4.9%. This rate does not reflect the significant number of people who are

underemployed. Just over 60% of people in paid employment are male. Over two-thirds of all employed people held paying jobs in the rural areas while the rest are in urban areas. About half of those employed in the rural areas work in the agriculture industry.

Wages and salaries are comparatively low. Wages, salaries and other conditions of work in the private sector are a matter of direct negotiation between employers and workers.

There are currently no trade unions in Tonga, although there is legislation permitting unions to form. The Public Servants Association operates as a de facto trade union for civil servants.

Local skilled labor is available in sufficient quantities to undertake most types of building work, except for some specialized skills and supervisory-level manpower, which is generally recruited from abroad.

Foreign-Trade Zones/Free Ports

Tonga does not operate any foreign trade zones or free port facilities.

Foreign Direct Investment Statistics

In its 2007 World Investment Report, the UN Conference on Trade and Development (UNCTAD) estimated 2006, foreign direct investment in Tonga sourced from transnational corporations to be US\$51 million, equal to 22.6 per cent of GDP.

The U.S. Commerce Department's Bureau of Economic Analysis records no U.S.-sourced FDI stocks for Tonga.

According to the MLCI, over 150 foreign companies are currently registered in Tonga. Foreign businesses are largely in the retail sector, and many are owned by ethnic Chinese and Indians.

Web Resources

Regulatory authorities

Ministry of Labour, Commerce and Industries, P.O. Box 110, Nuku'alofa, Tonga. Tel: (676) 23 688; www.mlci.gov.to;

Ministry of Finance and Economic Development, Nuku'alofa, Tonga. Tel: (676) 23 066; www.revenue.gov.to

National Reserve Bank of Tonga, Private Bag #25, Nuku'alofa, Tonga. Tel (676) 24-057; www.reservebank.gov.to

Banks

Tonga Development Bank, Hala Fatafehi, Nuku'alofa, Tonga. Tel: (676) 23 333; Email: tdevbank@tdb.to; www.tdb.to

Westpac Bank, Hala Taufa'ahau, Nuku'alofa, Tonga
Tel:

ANZ Bank

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